

A. Steven Porter

Attorney and Counselor at Law

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October 6, 2009

Attorney Thomas J. Misfeldt
Weld, Riley, Prenn & Ricci, S.C.
3624 Oakwood Hills Pkwy.
P.O. Box 1030
Eau Claire, WI 54702-1030

Re: Karl Swanson, et al. v. City of Chetek, et al.
Western District Court Case No. 09 CV 0097

Dear Tom:

I'm writing to request that defendants produce documents previously requested in discovery.

In Plaintiff's First Request for Production of Documents and Things, dated May 22, 2009, plaintiffs requested, among other things:

- B. All documents, files, meeting minutes, common council resolutions, letters, notes, reports, communications, surveys, memos, telephone messages, voice messages, fax covers, audio and video recordings, computer files, emails, complaints and other writings, recordings and documents in defendants' possession or control whether in paper or digital or electronic form and pertaining in any way to:
 - 1. Any complaint received and any investigation or action initiated against Karl Swanson, Kathy Wietharn or concerning their real property located at 424 Lakeview Drive, Chetek, Wisconsin, including, but not limited to, complaints, Wisconsin Uniform Municipal Court Citations and Complaints, alleged Chetek Municipal Code violations and stop-work orders.

In the deposition of Joseph Atwood on July 8, 2009, you and I had a discussion about producing certain minutes of Chetek Common Council meetings. One pertinent portion of the deposition transcript, at pages 101, reflects:

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MR. PORTER: The request is for any minutes of the common council in which the Swanson property was discussed, whether it was in open or closed session. We have a document that indicates one such meeting was June 10th of 2008.

My client recalls some in May of 2008, but we would -- we believe there were maybe three closed sessions and one time at least when Kathy Wietharn spoke in an open session, and it's my understanding that Mr. Misfeldt will have someone look for those?

MR. MISFELDT: Correct.

MR. PORTER: Thanks.

In Exhibit 4 marked in Mr. Atwood's deposition, Mr. Atwood states in a letter to Mr. Swanson dated June 27, 2007, "After much debate, the City of Chetek has concluded that you are in violation of the ordinance." At page 123 of Mr. Atwood's deposition, I requested that defendants produce any minutes pertaining to the "debate" referred to in Exhibit 4. This request would be consonant with plaintiffs' earlier document production request.

At page 129 of Mr. Atwood's deposition, he testified that he took notes of the "debate" referred to in Exhibit 4. He also testified that he had a "whole file" on "the Swansons." The transcript reflects that I asked you to produce Mr. Atwood's notes pertaining to the debate and the file he kept on "the Swansons." I am also requesting that defendants produce any notes taken by any city official or employee in regard to such a "debate." This request would also be consonant with plaintiffs' earlier document production request.

I have not heard back from you about these requests. In addition, I made a number of other requests on the record in Mr. Atwood's deposition for discoverable documents. They are all listed at the top of the transcript. These requests were consonant with plaintiffs' earlier document production request. I have not heard from you in regard to those requests either.

In order to adequately respond to issues raised in defendants' motion for summary judgment, I will need of all of these documents. The documents, such as minutes, notes and files pertaining to the enforcement actions against Mr. Swanson and Ms. Weitharn, and those


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pertaining to Mr. Atwood's authority and discretion with regard to interpreting and enforcing setbacks for fences, are especially crucial.

As you know, I have asked the Court for an extension of time until October 28, 2009, to respond to defendants' motion for summary judgement so that I would have time to seek your cooperation in producing the needed documents. Please let me know as soon as possible whether and when you can produce them.

Please let me know if you would like to discuss this.

Yours very truly,


A. Steven Porter

ASP/mm

xc: Attorney Dwight Pringle
Mr. Karl Swanson
Ms. Kathy Wietharn

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Date: 10/7/09 **Re:** Swanson, et al. v. City of Chetek, et al.,
Case No. 09 CV 97

To: Attorney Thomas J. Misfeldt
Fax number: (715) 839-8609

From: **Atty. A. Steven Porter**
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 LOVR: Receiving length Over, POVER: Receiving page Over, FIL: File Error,
 DC: Decode Error, MDN: MDN Response Error, DSN: DSN Response Error.

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